

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Case No. 08-61373

MICHAEL EDWARD FLETCHER, JR., *pro se*,

Chapter 7

Judge Thomas J. Tucker

Debtor.

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**MEMORANDUM CONCLUDING THAT 11 U.S.C. § 727(a)(9)
DOES NOT PRECLUDE A DISCHARGE OF THE DEBTOR
IN THIS CHAPTER 7 CASE**

This case is before the Court for review under 11 U.S.C. § 727(a)(9). The Debtor in this case, Michael E. Fletcher, Jr., also was a debtor in a previous bankruptcy case. The previous case was filed in this Court under Chapter 13 of the Bankruptcy Code, on February 13, 2003 (Case No. 03-44139). Debtor received a Chapter 13 discharge in the previous case, on December 18, 2007 (Docket # 14 in Case No. 03-44139).

The current Chapter 7 case was filed on September 3, 2008, less than six years after the previous Chapter 13 case was filed. For that reason, the Court has reviewed the previous case, to determine whether the Debtor is barred by 11 U.S.C. § 727(a)(9) from receiving a discharge in this Chapter 7 case. That section provides:

§ 727. Discharge

(a) The Court shall grant the debtor a discharge, unless—

...

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

11 U.S.C. § 727(a)(9).

Upon review of Case No. 04-44139, the Court finds that payments under the confirmed plan in that case totaled at least 70% of the allowed unsecured claims,¹ and that the confirmed plan in that case was proposed by the debtor in good faith, and was the debtor's best effort.

Accordingly, the Court concludes that 11 U.S.C. § 727(a)(9) does not preclude the Debtor from receiving a Chapter 7 discharge in this case.

The Court notes that the Debtor has not yet filed Official Form B 23, "Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management." Until he files this Certification, Debtor cannot obtain a discharge in this Chapter 7 case. This case likely would have been closed without a discharge by now, but for the United States Trustee's filing an adversary proceeding on January 30, 2009 against Shealia Tyson (Adv. No. 09-4191). The Debtor's bankruptcy case remains open pending the conclusion of that adversary proceeding, so there is still time for the Debtor to obtain the required course in personal financial management and file his Certification.

Signed on February 27, 2009

¹ According to the Trustee's Final Report and Account, filed on November 16, 2007 in Case No. 03-44139 (Docket # 13), payments under the confirmed plan totaled 87.74% of the allowed unsecured claims.

/s/ Thomas J. Tucker

Thomas J. Tucker

United States Bankruptcy Judge